



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2013

Ms. Cheryl Elliot Thornton  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2013-22205

Dear Ms. Thornton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508981 (C.A. File No. 13PIA0519).

The Harris County Constable, Precinct 7 (the "constable's office") received a request a specified internal affairs investigation involving a former employee. You claim the submitted information is excepted from disclosure under sections 552.102, 552.103, 552.108, 552.111, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The constable's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-16986 (2013). In that ruling, we concluded the constable's office must withhold certain information under section 552.130 of the Government Code and release the remaining information. You now seek to withhold the previously ruled upon information under

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<sup>1</sup> Although you raise section 552.1175 of the Government Code for information pertaining to the named former employee, we note section 552.117 is the proper exception to raise for information held in an employment context.

sections 552.102, 552.103, 552.108, 552.111, and 552.117 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the constable's office may not now withhold the information that was previously released, unless its release is expressly prohibited by law or the information is confidential by law. Although you now raise sections 552.103, 552.108, and 552.111 for the information that was previously released, these sections do not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the constable's office may not withhold the previously released information under section 552.103, section 552.108, or section 552.111 of the Government Code. However, because sections 552.102 and 552.117 of the Government Code make information confidential under the Act, we will consider your arguments under these exceptions.

We understand you to raise section 552.102 of the Government Code for all of the submitted information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test as announced in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Supreme Court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find none of the submitted information is subject to section 552.102(a) of the Government Code.

You assert some of the remaining information is subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family

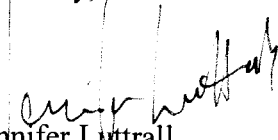
member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note that section 552.117 protects privacy and the requestor is the authorized representative of the former employee whose information is at issue. Thus, the requestor has a right of access to his client's personal information under section 552.023 of the Government Code. *See* Gov't Code § 552.023. Accordingly, the constable's office may not withhold any of the submitted information under section 552.117(a)(1).

Consequently, we find there is no indication the law, facts, and circumstances on which Open Records Letter No. 2013-16986 based have changed. Therefore, the constable's office must continue to rely on Open Records Letter No. 2013-16986 as a previous determination and withhold or release the responsive information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 508981

Enc. Submitted documents

c: Requestor  
(w/o enclosures)